

RESOLUTION

RELATIVE TO THE APPROVAL OF A SUBGRANT FROM THE CITY OF NASHUA TO THE TOWN OF HUDSON OF \$100,000 FROM NASHUA'S BROWNFIELDS CLEANUP FUND

CITY OF NASHUA

In the Year Two Thousand and Fourteen

RESOLVED by the Board of Aldermen of the City of Nashua that the City of Nashua is authorized to provide a subgrant from the City's Brownfields cleanup fund to the Town of Hudson, New Hampshire in the sum of \$100,000 on the terms and conditions set forth in the "Subgrant Agreement" attached hereto, for the purpose of Brownfields cleanup in Hudson at the future site of the Zachary Tompkins Memorial Field.

LEGISLATIVE YEAR 2014

RESOLUTION:

R-14-080

PURPOSE:

Relative to the approval of a subgrant from the City of Nashua to the Town of Hudson of \$100,000 from Nashua's Brownfields cleanup fund

SPONSOR(S):

Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

Fiscal impact is a \$100,000 subgrant from the City's Brownfields cleanup fund to the City to Hudson to be used for Brownfields cleanup.

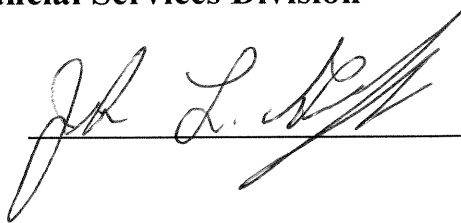
ANALYSIS

This resolution authorizes the City of Nashua to subgrant to the Town of Hudson \$100,000 for the purpose of Brownfields cleanup in Hudson at the future site of the Zachary Tompkins Memorial Field. While the grant agreement with the EPA allows the City to make loans or grants to government agencies, the City cannot loan or grant money to itself. Further, there are currently no private applications within the city to use the money. As the City expends its Brownfields cleanup award money from the EPA, the City can apply for and has historically received, replenishment funds so that the City can continue to support cleanup efforts.

**Approved as to account
number and/or structure,
and amount:**

Financial Services Division

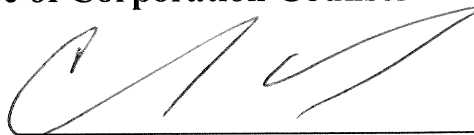
By:



Approved as to form:

Office of Corporation Counsel

By:



Date:

Sept. 19, 2014

SUBGRANT AGREEMENT
by and between
THE CITY OF NASHUA, NEW HAMPSHIRE
and
TOWN OF HUDSON, NEW HAMPSHIRE

THIS AGREEMENT is made this _____, 2014 by and between the City of Nashua, New Hampshire, 229 Main Street, Nashua, NH 03061 ("Nashua") and the Town of Hudson, New Hampshire, 12 School Street, Hudson, NH 03051, ("Hudson") both public bodies formed pursuant to New Hampshire law.

WHEREAS, Nashua received an award dated August 25, 2010 of \$1,000,000 from the United States Environmental Protection Agency ("EPA") to establish a revolving loan fund and provide grants to clean up brownfields pursuant to Cooperative Agreement BF-96134001 (the "Cooperative Agreement"), and is authorized to make certain grants from these funds ("Grant Funds"); and

WHEREAS, Nashua and the EPA have determined certain real property located at 9 Industrial Drive, Hudson, New Hampshire, the future Zachary Tompkins Memorial Field site, is eligible for Grant Funds under the Cooperative Agreement; and

WHEREAS, the new recreational facility at the future Zachary Tompkins Memorial Field will be accessible for the children of the Nashua area and serve as a strong example of inter-municipal collaboration; and

WHEREAS, Nashua has agreed to award Hudson certain of the Grant Funds which will be used by Hudson for the cleanup of the asbestos containing materials ("ACM") from the site (the "Project") in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq., "CERCLA"); and

NOW THEREFORE, in consideration of the covenants and promises contained herein, and for other valuable consideration, receipt of which is hereby acknowledged, it is mutually agreed by and between the Parties as follows:

1. SCOPE OF WORK AND AGREEMENT FEE

Nashua agrees to grant to Hudson the sum of \$100,000 to be used by Hudson exclusively to perform or cause to be performed the Project as set forth in the Scope of Work and Cost Estimate dated September 17, 2014 attached hereto as Attachment A and incorporated herein by reference (collectively, the Workplan).

In accordance with the Workplan, the total maximum cost of all activities to be performed under this agreement is \$100,000. Nashua agrees to pay Hudson, and Hudson agrees to accept, as full compensation for services, expenses, and materials encompassed under this Agreement the actual cost of the work performed in accordance with the Workplan up to

\$100,000. The amount to be paid to Hudson to carry out the activities described in the Workplan is to be determined by the actual cost records kept by Hudson and any subcontractors, in accordance with the provisions of this Agreement, the cost principals established by 49 CFR 18.22 and 48 CFR 31.2, OMB Circular A-87, and are subject to review under the Single Audit Act of 1984. The total of such payments made shall be adjusted to conform to the determination in such final audit in accordance with these provisions, but in no case shall the total cost exceed the amount set forth in the Workplan or \$100,000, whichever is less.

A minimum of one hard copy and one digital copy (Microsoft Word or pdf format) of draft and final reports and digital shall be provided to Nashua.

2. GRANT DISBURSEMENT

Nashua shall pay, or cause to be paid, to Hudson progress payments upon completion of tasks and billed no more than monthly. The payments shall be one hundred percent (100%) of the amount expended during the invoice period, and paid promptly, in accordance with applicable State and Federal Regulations. Nashua will seek to make payments within forty-five (45) days of receipt of an invoice from Hudson. The final payment will be paid upon completion of the scope of work and acceptance of deliverables by Nashua.

Payments will be for actual costs incurred by Hudson or its sub-contractors up to the contract limit as determined by using cost records for each Task and expense line items such as labor, benefits and direct and indirect costs of the required services covered by this Agreement. Task expenses, direct and indirect costs for this project are attached hereto and hereby made a part of this Agreement. Requests for payment shall be forwarded to Nashua for all work and shall be accompanied by a brief progress report describing work completed and remaining and a description of MBE/WBE Minority Based Enterprise (MBE)/Women Based Enterprise (WBE) utilization for the invoiced activities.

Nashua shall pay for all approved services, expenses and materials accomplished or used during the period of this Agreement pursuant to the terms of this Agreement, and only that effort will be included on invoices under this Agreement. Invoices for costs should be itemized in accordance with and referenced to the Workplan.

Invoices shall be forwarded directly to: Thomas Galligani, Economic Development Director, Office of the Mayor, 229 Main Street, P.O. Box 2019, Nashua, NH 03061.

3. AMENDMENTS

No changes or amendments to the Agreement shall be effective unless reduced to writing, signed by authorized representatives of Nashua and Hudson, and approved as needed by the funding agencies.

4. COMPLIANCE WITH PROJECT AND LEGAL REQUIREMENTS

Hudson shall ensure that the Project protects human health and the environment and carry out the Project and all obligations imposed by this Agreement in accordance with CERCLA, § 104 (k); the Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, set forth in 40 CFR Part 31; and any and all other applicable provisions of federal, state or local law, regulations, ordinances, policies, and/or guidelines.

This Agreement is funded through the Cooperative Agreement with the EPA. If funding for this project is not continued by this agency, Nashua may terminate the Agreement as of the effective date of termination of funding by the agency and will compensate Hudson only for those costs incurred from project initiation to the effective date of termination.

Termination of this Agreement shall be accomplished in accordance with the provisions of 49 CFR 18.43 and 18.44. In taking an enforcement action, Nashua will provide Hudson with an opportunity for such hearing, appeal, or other administrative proceeding to which Hudson may be entitled under any statute or regulation applicable to the action involved.

Nashua has the right to terminate this contract in the event Hudson fails to comply with its obligations under this agreement.

Costs to Hudson resulting from obligations incurred during a suspension or after termination are not allowable unless Nashua expressly authorizes them in the notice of suspension or termination or subsequently. Other costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowed if the costs result from obligations which are properly incurred before the effective date of suspension or termination.

Except as provided above, this Agreement may be terminated by mutual consent of Nashua and Hudson subject to written termination conditions, including the effective date, and in the case of partial termination, the portion of the Agreement to be terminated, or by Hudson upon written notification to Nashua, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, Nashua determines that the remaining portion of the award will not accomplish the purposes for which the Agreement was made, Nashua may terminate the award in its entirety under the methods described above.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photos and reports or other materials prepared by the parties under this Agreement shall become the property of Nashua and Hudson and any subcontractor shall be entitled to receive just and equitable compensation for any said work completed on such documents, data, studies, surveys, drawings, maps, models, photos and reports or other materials.

5. EXTENSION OF TIME

Extensions of time will not be granted to this contract except in cases of unforeseen extreme hardship for the consultant, and except for delays caused by agency review times outside the control of Hudson and any sub-contractors.

6. AUDIT AND INSPECTION

Hudson and any sub-contractors agree to retain on file all books, documents, papers, accounting records, and other evidence pertaining to costs incurred for work under this Agreement for a period of at least three (3) years after payment of the final voucher by Nashua. It further agrees that Nashua or authorized representatives of the State and Federal Government may have access to these records for purposes of review, pre-audit, and audit during the contract period or anytime within the aforementioned retention period. Copies of these documents shall be furnished if requested at no cost to the State, or Federal Government.

7. PERSONNEL REQUIREMENTS AND CONDITIONS

Hudson shall contract with or employ only qualified personnel to carry out the provisions of this Agreement and Attachments.

Excepting with the approval of Nashua during the life of this Agreement, Hudson will not employ:

1. personnel on the payroll of the State of New Hampshire or Nashua who are directly involved with the awarding, administration, monitoring, or performance of the contract or the project which is subject to the contract, or,
2. any person so involved within one (1) year of termination of employment with the State of New Hampshire.

8. CONTRACTS AND PROCUREMENT

Hudson shall have in effect procurement standards and contract procedures in accordance with applicable Federal and State laws and regulations and local ordinances.

Hudson, by signing this Agreement, certifies that all procurement shall be accomplished in accordance with applicable Federal and State laws and regulations and local ordinances.

9. CHOICE OF LAW AND JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the State of New Hampshire and any controversy arising under this Agreement shall be brought in a court of competent jurisdiction in New Hampshire.

10. GENERAL COMPLIANCE WITH LAWS

The terms of this Agreement shall be carried out in a manner consistent with all Federal, State, and municipal laws and ordinances applicable to any work involved under this Agreement.

The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the parties. If for any reason, any provision of this Agreement is unenforceable or invalid, that provision shall be deemed severed from this Agreement, and the remaining provisions shall be carried out with the same force and effect as if the severed provision had not been a part of this Agreement.

This Agreement shall be governed by laws, whether statutory or case law, of the State of New Hampshire. If in any instance, the pass through requirements from the U.S. Environmental Protection Agency conflict with these provisions, the pass through requirements shall be adhered to.

11. EPA TERMS AND CONDITIONS – WBE/MBE POLICY

Nashua is making this sub grant through an agreement with the EPA. All pass through requirements of those programs are hereby incorporated by reference into this contract. A copy of these agreements is included as Attachment B and made part of this Agreement. The EPA has a MBE/WBE "fair share" goal/objective of 1 % MBE and 1 % WBE for the Brownfields Program. Hudson and all sub-contractors agree to ensure, to the fullest extent possible, that at least the applicable "fair share" objects of Federal funds for prime contract or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and Historically Black Colleges and Universities. Hudson and all sub-contractors are required to include the applicable "fair share" objectives in bid documents and to require all prime contractors do the same for subcontracts.

12. EQUAL OPPORTUNITY

During the performance of this Agreement, Hudson and all sub-contractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

Hudson shall comply with the applicable provisions of Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended by Executive Order 11375 and as supplemented by the Department of Labor Regulations (41 CFR Part 60). Hudson shall also comply with the rules, regulations, and relevant orders of the Secretary of Labor, DOT Regulation 49 CFR 21 through Appendix C, and DOT Regulation 23 CFR 71.0.405 (b). Accordingly all subcontracts shall include references to the above.

Hudson shall comply with all of the requirements of Title 21 V.S.A., Chapter 5, Subchapters 6 and 7 relating to Fair Employment Practices to the extent applicable. A similar provision shall be included in any and all subcontracts.

13. CONFERENCES

Conferences on work progress, coordination and liaison may be held at the request of Nashua or Hudson.

14. COMPLETION AND ACCEPTANCE

Upon completion of all services encompassed herein and payment of the agreed upon fee, this Agreement with its mutual obligations shall be terminated.

15. INDEMNIFICATION

Hudson and all sub-contractors shall hold harmless Nashua and the EPA against any and all claims, damages, suits, or causes of action for damages arising from non-performance or negligence or willful misconduct during the performance or non-performance of services under this agreement after the commencement of the term of this agreement and any orders, decrees, or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of license sustained in the performance of this agreement by any person or persons whatever.

Hudson and all sub-contractors shall and will indemnify Nashua and the EPA from any and all liability, loss, damage, or expense, causes of action, suits, claims, and judgment including reasonable legal expenses in connection with defending against any such action, suit or claim (provided such action, suit, or claim is not covered by insurance) arising from injury to person or property of any and every nature and for any matter or thing growing out of non-performance, negligence or willful misconduct during the performance or non-performance of its obligations under the terms of this agreement whether caused by Hudson, its employees, agents or subcontractors.

16. INSURANCE

Hudson shall, through its subcontracts and before commencing the performance of this Agreement, provide Worker's Compensation Insurance if required by law for the benefit of all persons to be employed under this Agreement, including contractors, agents, or workers; and shall continue such insurance in full force and effect during the term of this Agreement.

Hudson shall, through its subcontracts, procure and maintain insurance during the term of this Agreement in the amounts and for the types of coverage indicated below.

With respect to all operations performed by the Hudson, contractors, agents or workers, Hudson shall carry general liability and property damage insurance providing all major divisions of coverage. The policy shall be on an occurrence form and limits shall not be less than: General Liability coverage of \$1 million per occurrence and \$2 million in aggregate, motor vehicle liability coverage of \$1 million combined single limit, Workers Compensation coverage per State of New Hampshire, and professional errors and omissions coverage of \$1 million.

Said insurance shall be maintained in full force and effect during the life of this Agreement and shall protect Hudson, its employees, subcontractors, agents and representatives for personal injury and wrongful death, and for damages to property arising in any manner from the negligent or wrongful acts or failures to act of Hudson, its employees, subcontractors, agents or representatives agents, or representatives in the performance of such work covered by this Agreement. Such insurance against legal liability shall be available so as to indemnify and save harmless Nashua, the EPA, and the property owner at which the Project is located and any or all of the officers, agents, and employees thereof resulting out of or in the consequences of acts, or failures to act, on the part of Hudson in the performance of work covered by this Agreement.

Certificates showing Hudson is carrying the above-described insurance in at least the above specified minimum amounts with an insurance company or companies authorized to do business in the State of New Hampshire shall be furnished to Nashua before commencement of the work and further provided that such policies of insurance shall be non-cancelable except after thirty days notice to Nashua, such notice of cancellation to be sent by the party proposing cancellation by registered mail, postage prepaid, with a return receipt of the addressee requested.

The failure to provide and maintain in force any of the insurance provided for by this Agreement shall be deemed a material breach of the Agreement and may, at the option of Nashua, operate as an immediate termination thereof.

17. TAX REQUIREMENTS

Purposely Omitted

18. DEBARMENT CERTIFICATION

Hudson must comply with Subpart C of 40 CFR Part 32, "Responsibilities of Participants Regarding Transactions," and 40 CFR Part 31.35 of Administration Regulations. Consultant is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Hudson is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Hudson acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment. Hudson may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

Hudson must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension. "

19. LOBBYING

Hudson certifies by signing this agreement that to the best of his or her knowledge and belief:

A. No Federal funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or officer or employee of Congress, or an employee of a Member of Congress in the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, abatement, or modification of any Federal contract, grant, loan, or cooperative Agreement.

B. If any funds, other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award of all documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the transaction was made or entered into. Submission of this certification is a pre-requisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

20. PROPRIETARY RIGHTS

The parties of this Agreement hereby mutually agree that, if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries shall be the sole property of Hudson. However, Hudson agrees to and does hereby grant to Nashua and the United States Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice each invention in the manufacture, use and disposition according to law, or any article or material and in the use of any method that may be developed as part of work under this agreement.

21. COPYRIGHTS AND RIGHTS IN DATA

All rights, titles to, and ownership of the data, papers, reports, forms, documentation, and other material collected or produced under this Agreement, including publication rights, resulting

from this project and/or prepared for Nashua pursuant to this contract shall remain with Nashua, property owners, Hudson, and EPA.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

City of Nashua, New Hampshire

BY: _____

DATE: _____

TITLE: _____

Town of Hudson, New Hampshire

BY: _____

DATE: _____

TITLE: _____

**TOWN OF HUDSON
ZACH'S FIELD – 9 INDUSTRIAL DRIVE
SCOPE OF WORK and COST ESTIMATE
SEPTEMBER 17, 2014**

Scope of Work: Pave approximately 53,664 square foot parking lot located at 9 Industrial Drive, Hudson, NH. Pavement costs to include a 2" to 2 ½" binder course and a 1 ½" to 2" finish course. Included in the scope of work is curbing around the paved area. This work will be for the final closure of this asbestos remediation site. The cost estimate includes engineering costs, grading the parking area for paving, the base asphalt course, the final asphalt course, curbing and overall project contingency. The cost estimate is based on the Town of Hudson's town wide paving price with Brox Industries which is valid for 2014 and 2015.

Cost Estimate: \$105,000.00